Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Tariff Filing Requirements for Interstate Common Carriers	)	CC Docket No. 92-13
	)	
	)	
	)	

REPLY COMMENTS OF CENTEL CELLULAR COMPANY

Centel Cellular Company ("Centel") respectfully submits its reply comments in the above-captioned proceeding.[1] For the reasons discussed herein, Centel believes that the Commission's tariff forbearance policy for cellular carriers is lawful and its reversal would be contrary to the public interest.

I. INTRODUCTION AND SUMMARY

This proceeding is designed "to review the lawfulness and future application of [the Commission's] forbearance rules and policies."[2] As noted by several parties, the Notice largely concerns the traditional long distance marketplace.[3] However, its outcome could potentially affect cellular regulation.

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[1] FCC 92-35 (rel. Jan 28, 1992) (hereinafter "Notice").

[2] Notice at ¶2.

[3] See, e.g., Telocator, p.2.

Federal tariff supervision has never been imposed on the cellular industry. This long-standing forbearance is fully consistent with the local nature of such services. The vast preponderance of cellular calls are intrastate communications services, over which the Commission has no tariffing jurisdiction pursuant to Section 2(b) of the Communications Act.[4] In addition, even geographically interstate services can be jurisdictionally intrastate under Section 221(b) of the Act.[5] This proceeding must take care to recognize and preserve these fundamental characteristics of the cellular service.

Centel fully agrees with the overwhelming majority of opening commenters that the Commission has ample legal and policy basis to continue to permit cellular carriers not to file tariffs for their limited interstate services.[6] The Commission's assertion of forbearance authority under the Act has repeatedly been recognized and ratified by Congress. The Commission also has noted that tariff regulation of the

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[4] 47 U.S.C. §§ 2(b).

[5] Id. § 221(b).

[6] Ad Hoc Telecommunications Users Committee, pp. 7-13 ("AHTUC"); Cellular Telecommunications Industry Association, pp. 2, 10-20 ("CTIA"); Competitive Telecommunications Association, pp. 7-19 ("CompTel"); MCI Telecommunications Corporation, pp. 5-8 ("MCI"); Metropolitan Fiber Systems, Inc., pp. 5-12 ("MFS"); Southwestern Bell Corporation, pp. 2-3 ("SBC"); Williams Telecommunications Group, Inc., pp. 2-9 ("WilTel").

cellular industry would be unnecessary and counterproductive.[7]

II. THERE IS NO LEGAL OR POLICY BASIS FOR IMPOSING TARIFF REGULATION ON CELLULAR CARRIERS.

A. The Commission Has No Tariff Authority Over the Vast Majority of Cellular Services.

This proceeding is fundamentally irrelevant to the vast majority of cellular service offerings. As the Commission, the courts, and the Congress have long recognized, mobile services generally -- and cellular service in particular -- are local in nature and therefore subject primarily to state, rather than federal, jurisdiction.

As early as 1954, the Commission requested Congressional amendment of Sections 2(b) and 221(b) of the Communications Act to clarify that companies providing radio-based services are engaging "primarily in intrastate operations"[8] and consequently not subject to federal regulation. Congress adopted the proposed amendments,[9] and in the succeeding four

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[7] Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, 6 F.C.C. Rcd 1719, 1725 (1991), appeal pending sub. nom., Cellnet Communications v. FCC, D.C.Cir. No. 91-1251 (hereinafter "Cellular Resale Policies").

[8] S. Rep. No. 1090, 1954 U.S. Code Cong. and Admin. News 2133.

[9] Public Law No. 345, 83rd Cong. 2d Sess., Approved April 27, 1954, 68 Stat. 63-64.

decades, the principle that mobile services "are essentially intrastate in nature, even though the radio portion of such services might 'spill over' into the adjoining state," has been repeatedly reaffirmed.[10]

In 1965, for example, the Commission prohibited mobile carriers from filing federal tariffs, with very limited exceptions.[11] A decade after adoption of this policy, the Commission expanded it, explaining that a mobile carrier

> whose reliable service area does extend beyond state borders is not required to file tariffs with the FCC for such service wherever radio common carrier service is subject to regulation by state or local authority.[12]

Importantly, when the Commission set forth the regulatory structure for cellular service in the early 1980s, it emphasized that cellular is a predominantly exchange service, within the meaning of Sections 2(b) and 221(b) of the Communications Act. Accordingly, the Commission "reserv[ed] to the states jurisdiction with respect to charges, classifications, practices, services, facilities or

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[10] Radio Telephone Communications, Inc. v. South Eastern Telephone Co., 170 So.2d 577 (Fla. 1965).

[11] Public Notice, FCC Announces New Policy Regarding Filing of Mobile Tariffs, 1 F.C.C.2d 830 (1965).

[12] FCC Policy Regarding Filing of Tariffs for Mobile Services, 53 F.C.C.2d 579 (1975).

regulations for service by" cellular carriers.[13] Furthermore, the Commission, while recognizing that "cellular systems can provide both intrastate and interstate communication",[14] declined to require the filing of federal tariffs. Indeed, notwithstanding this recognition, the Commission subsequently reiterated that "cellular carriers are generally engaged in the provision of local, intrastate, exchange telephone service . . .."[15]

B. The Commission Has Authority To Continue To Permit Cellular Carriers Not to File Tariffs for Their Limited Interstate Services.

Although Centel does provide some interstate services, the Commission has expressly forborne from requiring federal tariff filings for these offerings:

> Public Land Mobile Services licensees providing interstate mobile services possess insufficient market power to charge unlawful rates . . . and therefore constitute "non-dominant" carriers . . . [n]on-dominant carriers are subject to "forbearance," and need not file tariffs

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[13] Cellular Communications Systems, 89 F.C.C.2d 58, 96 (1982).

[14] Cellular Communications Systems, 86 F.C.C.2d 469, 504 n.74 (1981).

[15] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 R.R.2d 1275, 1278 (1986).

with the FCC for their interstate services.[16]

Centel submits that the Commission has discretion under Section 203(b)(2) of the Communications Act to continue to exempt cellular carriers from the Act's tariff filing requirement.[17] This section empowers the Commission to "modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions . . ."[18]

For more than ten years, the Commission has interpreted Section 203(b)(2) as delegating "ample authority to remove the requirement of tariff filings where appropriate."[19] As many commenters explained, the Commission's long-established interpretation of its own enabling statute is entitled to

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[16] Preemption of State Entry Regulation in the Public Land Mobile Service, 59 R.R.2d 1518 (1986), at ¶ 33, reversed on other grounds, NARUC v. FCC, No. 86-1205 (D.C. Cir. March 30, 1987) aff'd in relevant part, FCC 87-319 (Oct. 21, 1987).

[17] See 47 U.S.C. § 203(a).

[18] 47 U.S.C. § 203(b)(2). See also Section 203(c) which provides that: "[n]o carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in [interstate] communications unless schedules have been filed and published in accordance with the provisions of this Act . . ." 47 U.S.C. § 203(c) (emphasis added).

[19] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facility Authorizations Thereof, 84 F.C.C.2d 445, 479 (1981).

great deference, particularly when Congress itself has ratified it.[20]

In the cellular context, Congress actually confirmed the Commission's forbearance authority four years before its adoption. In explaining Section 332 of the Communications Act, which preempts state regulation of private land mobile radio services, the Conference Report regarding the Communications Act Amendments of 1982 stated that "[n]othing in this subsection shall be construed as prohibiting the Commission from forbearing from regulating common carrier land mobile services . . ."[21] This statement lends strong support to the Commission's forbearance authority with respect to cellular carriers.

Finally, the validity of the general forbearance policy was decisively re-affirmed by the enactment of the Telephone Operation Consumer Services Improvement Act of 1990 ("TOCSIA").[22] As several commenters demonstrated, TOCSIA's approach to the regulation of operator services, which specifically preserves the Commission's forbearance policy, is compelling evidence that Congress is not only aware of,

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[20] See, e.g., CTIA pp. 9, 14; CompTel, p 9; MCI pp.25-35, 44; MFS, pp. 6-11 .

[21] H. Conf. Rep. No. 97-765 at 56, 1982 U.S. Code Cong. and Admin. News 2237, 2300.

[22] 47 U.S.C. § 226.

but acquiesces in, forbearance regulation.[23] Thus, there is compelling support for the Commission's authority to continue its forbearance policy with respect to the interstate services of cellular carriers.

C. Forbearance Represents Sound Policy.

As discussed above, there is no legal reason to depart from the Commission's current forbearance rule for interstate cellular services. Nor is there any policy reason for doing so. Tariff regulation is not necessary to protect ratepayors and in fact, would harm consumers by imposing unwarranted expenses on carriers and diminishing pricing flexibility and responsiveness.

The competitive nature of cellular service is well-recognized. In 1981, for example, the Commission noted that cellular "price and product competition should benefit the consumer through lower equipment costs and greater equipment selection."[24] Accordingly, federal primacy over the regulation of cellular services was not deemed necessary.[25] These expectations were well-founded, as competition today

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[23] See, note 20, supra.

[24] Cellular Communications Systems, supra, 86 F.C.C.2d at 503.

[25] Id. at 504.

among cellular licensees with respect to price, coverage area, and new services is intense.[26]

Moreover, with respect to the interstate services at issue in this proceeding, cellular carriers in the aggregate have a minuscule market share -- by one estimate, less than 0.5 percent of all interexchange minutes of use.[27] Any individual carrier would have a market share well below 0.1 percent. Clearly, then, cellular carriers are non-dominant players in the long distance market. They provide long distance calling capabilities on a resale basis, as an adjunct to their local cellular offerings in order to meet their subscribers' needs.

In a competitive environment, tariffing is not only unnecessary, but harmful to consumers. Tariffing inherently constrains carriers' flexibility and responsiveness and invites groundless challenges from competitors that serve only to delay the effectiveness of beneficial rate reductions. In addition, even a limited tariffing requirement would engender significant cost burdens, forcing

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[26] See Cellular Resale Policies, supra; Amendment of Parts 2 and 22 of the Commission's Rules (Cellular Auxiliary Offerings), 3 F.C.C. Rcd 7033, 7038 (1988), recon., 5 F.C.C. Rcd 1138 (1990). Additionally, cellular licensees face intra-service competition from resellers, and inter-service competition from enhanced SMR providers and common and private carrier paging companies.

[27] See Memorandum of the Bell Companies, C.A. No. 82-0192, filed Dec. 13, 1991, at 26.

carriers to commit resources to complying with needless regulatory requirements rather than upgrading their systems, developing new services, and investing in advanced spectrum-efficient technology. Accordingly, there are sound policy reasons for continuing the forbearance policy as applied to interstate cellular services.

III. CONCLUSION

The longstanding policy of forbearance regulation for cellular carriers' limited interstate services remains lawful and should be continued. The record in this proceeding provides a sound basis for allowing cellular carriers to operate free from unnecessary and counter-productive regulatory requirements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 1992, I caused copies of the foregoing "Reply Comments of Centel Cellular Company" to be mailed via first-class postage prepaid mail to the following:

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